

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JEROME CEASAR ALVERTO,

Plaintiff,

V.

BARBARA J. GRONSETH, CATHY
APLINE,

Defendants.

No. C12-5518 BHS/KLS

ORDER DENYING MOTION TO AMEND

BARBARA J. GRONSETH, CATHY
APLINE,

Defendants.

Before the Court is Plaintiff's latest motion to amend. ECF No. 43. Plaintiff seeks to amend his Second Amended Complaint (ECF No. 34) to add claims against the former and current superintendents of Clallam Bay Corrections Center (CBCC) and a claim of retaliation. *Id.* Having reviewed the motion, Defendants' opposition (ECF No. 46) and balance of the record, the Court finds that the motion shall be denied.

BACKGROUND

Plaintiff filed his original complaint on June 12, 2012. ECF No. 1-1, subsequently docketed at ECF No. 8. The Court declined to serve the complaint due to several deficiencies, but allowed Plaintiff leave to file an amended complaint. ECF No. 11. Plaintiff filed his Amended Complaint on August 9, 2012. ECF No. 14. On October 10, 2012, Plaintiff filed a motion to supplement his allegations against Defendant Gronseth to add a retaliation claim relating to an incident in the law library that occurred after the filing of his original complaint. ECF No. 21. The Court denied Plaintiff's motion to supplement, but granted him leave to file a

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1 second amended complaint. ECF No. 33. The Court stated, however, that no further
2 amendments would be allowed. *Id.*, p. 2. The Pretrial Scheduling Order set deadlines for the
3 completion of discovery on July 5, 2013, dispositive motions on September 6, 2013, and
4 submission of a joint status report on December 6, 2013. ECF No. 37.

5 In this latest motion to amend, filed almost a year after the onset of this lawsuit, Mr.
6 Alverto seeks to add the Secretary of the Department of Corrections (DOC) for allegedly
7 adopting a DOC policy that prohibits an inmate from filing grievances against prison employees
8 “in circumstances where a prison employee initiates a disciplinary or administrative action
9 against” the inmate. ECF No. 42, p. 5. He seeks to add Ronald Fraker and Mike Obenland
10 (identified as John Doe/Jane Doe Superintendent), the former and current superintendents of
11 Clallam Bay Corrections Center (CBCC) and Mike Obenland, for “adopting and implementing
12 official policy designating the CBCC law library as a dumping ground for incompetent prison
13 employees” so that his complaints will be suppressed. ECF No. 43-1, p. 6.

16 DISCUSSION

17 Leave to amend should be freely given “when justice so requires.” Fed. R. Civ. P.
18 15(a)(2). “The denial of a motion for leave to amend pursuant to Rule 15(a) is reviewed ‘for
19 abuse of discretion and in light of the strong public policy permitting amendment.’” *Bonin v.*
20 *Calderon*, 59 F.3d at 845, quoting *Outdoor Systems, Inc. v. City of Mesa*, 997 F.2d 604, 614 (9th
21 Cir. 1993). A district court may take into consideration such factors as “bad faith, undue delay,
22 prejudice to the opposing party, futility of the amendment, and whether the party has previously
23 amended his pleadings.” See *In re Morris*, 363 F.3d 891, 894 (9th Cir. 2004), quoting *Bonin*, 59
24 F.3d at 845.

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1 The Court finds that the proposed amendments are untimely and futile. To the extent
2 Plaintiff wishes to pursue a retaliation claim, there is no need to amend as the Second Amended
3 Complaint contains a retaliation claim and Defendants explicitly consent to have the Court try
4 Plaintiff's retaliation claims against the current defendants. ECF No. 46, p. 4. In addition,
5 Plaintiff has no right to a prison grievance system and there is no allegation that the lack of a
6 grievance remedy prevented him from proceeding in this case. Finally, Plaintiff has previously
7 been allowed to amend his complaint on two occasions and was advised that no further
8 amendments would be allowed.

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10 Accordingly, it is **ORDERED**:

11 (1) Plaintiff's motion to amend (ECF No. 43) is **DENIED**.
12 (2) The Clerk is directed to send a copy of this Order to Plaintiff.

13 **DATED** this 12th day of June, 2013.
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16 Karen L. Strombom
17 United States Magistrate Judge
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